

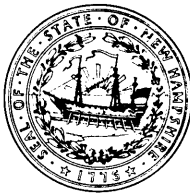
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January 13, 1988

Everett V. Taylor, Commissioner
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Dear Commissioner Taylor:

You have requested our review of an opinion which we gave to former commissioner David J. Power, dated February 6, 1985, which states that the Department of Revenue Administration (DRA) could impose interest and dividends tax on dividends received by shareholders from mutual funds investing solely in obligations of the United States Government. Since the issuance of that opinion, several courts in other states have examined this issue and each has held that states are required to exempt such income from taxation. While the issue has not been decided in New Hampshire, it is our recommendation, based upon our review of the decisions in other states, that the Department also exempt from the interest and dividends tax dividends received from shareholders of mutual funds investing solely in obligations of the United States Government.

In our previous opinion, we stated, "[W]hile it is arguable that [American Bank & Trust Co. N. Dallas County, 463 U.S. 855 (1983)] prohibits a state from taxing dividends of a mutual fund which invests in federal government obligations, that result is not compelled." Since that opinion, several other jurisdictions have ruled that states are prohibited from taxing such dividends. Each of these jurisdictions interpreted 31 U.S.C. § 3124 (a) and found that the exemption created by that statute applied to earnings derived from a mutual fund that invested exclusively in federal government.

In Andras v. Illinois Department of Revenue, 506 N.E. 2d 439 (Ill. App. 2nd Dist. 1987), the Court quoted from American



Bank & Trust Company v. Dallas County and stated that § 3124 "indicated a congressional intent, 'to sweep away formal distinctions and to invalidate all taxes measured directly or indirectly by the value of federal obligations.'" Id. In view of this broad interpretation of 31 U.S.C. § 3124 by the United States Supreme Court, several state courts have concluded that income from mutual funds investing directly in federal obligations is exempt from state taxation. See Andras v. Department of Revenue, supra (Illinois income tax imposed on distributions received from a mutual fund investing in United States obligations is exempt to the extent that income is derived from directed investment in such securities, but not from repurchase agreements); First Union Bank & Trust v. Comptroller of the Treasury, No. 2711, slip op. (Md Tax Ct. July 8, 1987) (Maryland income tax on income distributed from a mutual fund investing in United States obligations and repurchase agreements is exempt from tax); Capital Preservation Fund, Inc. v. Wisconsin Department of Revenue, slip op. (Wis. Cir. Ct. Dane County, May 5, 1987) (income tax imposed by Wisconsin taxing department on income received by shareholders from mutual funds investing in United States obligations violates 31 U.S.C. § 3124 (a)); In re: Thomas C. Sawyer Estate, slip op., (Vermont Supreme Court, dated December 11, 1987) (the portion of mutual fund dividends derived from direct investment in United States obligations not including repurchase agreements is exempt from taxation pursuant to 31 U.S.C. § 3124 (a)); Estate of Holden C. Kraft v. Indiana Department of Revenue, slip. op. (Indiana Cir. Ct., Hamilton County, September 2, 1986) (Indiana adjusted gross income tax on dividend income from mutual fund investing in United States obligations is exempt from taxation by federal law); Matz v. Michigan Department of Treasury, 401 N.W. 2d 62 (Mich. Ct. App. 1986) (Michigan intangibles tax may not be imposed on shares in a mutual fund investing in United States obligations); Plymouth Home National Bank v. Commissioner of the Department of Revenue, 473 N.E. 2d 1139 (Mass. 1985) (income received by shareholders of mutual fund investing in United States government securities is excluded from the computation of Massachusetts gross income).

In view of these decisions, it is our recommendation that DRA exempt dividends received from shareholders investing solely in obligations of the United States Governments from taxation. The opinion dated February 6, 1985, to former commissioner Power is, therefore, superseded by this opinion.

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I trust that this has been responsive to your inquiry. If you have any questions about this, or if you would like to discuss this further, please contact me.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Daniel J. Mullen".

Daniel J. Mullen
Assistant Attorney General

DJM:mee